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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 DAVID ABARA,)
10 Petitioner,) 3:10-cv-00688-LRH-VPC
11 vs.)
12 JACK PALMER, et al.,)
13 Respondents.)
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15 This is a habeas corpus case pursuant to 28 U.S.C. § 2254 in which petitioner, a state
16 prisoner, is proceeding *pro se*. On November 18, 2010, this court entered an order in which it found
17 that grounds 1, 2, 3, 4, 5, 6, 7, 8, and 11 of the petition are unexhausted in state court. (Docket #6.)
18 Consequently, the court found the petition in this action to be a "mixed" petition -- one containing
19 both claims exhausted in state court and claims not exhausted in state court. The court informed
20 petitioner that as such, the entire petition is subject to dismissal, unless petitioner elects to abandon
21 the unexhausted claims. *See Rose v. Lundy*, 455 U.S. 509, 521-22 (1982); *Szeto v. Rusen*, 709 F.2d
22 1340, 1341 (9th Cir.1983).

23 The court therefore granted petitioner thirty days to move for stay and abeyance under
24 *Rhines*, show good cause for his failure to exhaust his unexhausted claims in state court, and present
25 argument regarding the question whether or not his unexhausted claims are plainly meritless.
26 Alternatively, the court granted petitioner thirty days to advise the court of his desire to abandon the
27 unexhausted claims by filing a sworn declaration of abandonment, signed by the petitioner himself.
28 The court expressly warned petitioner that his complete failure to respond to the court's order would

1 result in the dismissal of this petition as a mixed petition.

2 Thirty days have now passed and petitioner has not responded to the court's order of
3 November 18, 2010. Accordingly, **IT IS HEREBY ORDERED** that this petition for writ of habeas
4 corpus is **DISMISSED** without prejudice as a mixed petition containing both exhausted and
5 unexhausted claims.

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7 DATED this 15th day of January, 2010.



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10 LARRY R. HICKS
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12 UNITED STATES DISTRICT JUDGE
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